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OFFICE OF PETITIONS

In re Application of
Wang et al.
Application No. 10/026,043
Filed: October 25, 2001
Attorney Docket No. 1190

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ON PETITION

This is a decision on the petition filed under 37 CFR 1.183 to waive the requirements of 37 CFR 1.10 and to accord the above-identified application a filing date of October 25, 2001, instead of December 25, 2001. The petition is also being treated as a petition under 37 CFR 1.10.

The petition under 37 CFR 1.10 is **granted**.

The petition under 37 CFR 1.183 is **dismissed as moot**.

Paragraph (c) of 37 CFR 1.10 sets forth procedures for filing a petition for a filing date where there is a discrepancy between the filing date initially accorded by the Office and the "date-in" entered by the USPS. Paragraph (d) of 37 CFR 1.10 sets forth procedures for filing a petition for a filing date where the "date-in" is incorrectly entered or omitted by the USPS.

Petitioner has failed to provide evidence establishing the "date-in" entered by the USPS. Specifically, petitioner has failed to provide the PTO with a copy of the express mail label. Since a copy of an express mail label has not been provided, petitioner has failed to establish the "date-in" entered by the USPS. Therefore, petitioner has failed to establish a discrepancy between the filing date accorded by the Office and the "date-in" entered by the USPS. In addition, petitioner has failed to establish that the "date-in" was incorrectly entered or omitted by the USPS.

Petitioner has provided a printout of a search result of an USPS database. The search results indicate the package was accepted by the USPS at 4:59 pm on October 25, 2001. The current policy, which may change in the future, of the Office is to grant a petition under 37 CFR 1.10 if the express label is unavailable and a search of an USPS database supports petitioner's allegations. Therefore, the petition under 37 CFR 1.10 is granted. To the extent 37 CFR 1.10 requires presentation of an express mail label, that requirement is hereby *sua sponte* waived by the Office. Since the Office has granted the relief requested under 37 CFR 1.10, the merits of the petition under 37 CFR 1.183 need not be considered and the petition is dismissed as moot.

Since relief has been granted under 37 CFR 1.10, the petition fee of \$130 for the petition under 37 CFR 1.183 will be credited to petitioner's deposit account.

In the future, petitioner should take steps to receive an express mail label with a clear date-in, and not rely solely on possible database results.¹ If the Office receives a label with an omitted or illegible date-in, the Office will give the application a filing date of the date the package is received, unless a petition is filed. A petition involves additional work by petitioner and the Office, and also delays prosecution of the application into a patent.

The file is now being forwarded to the Office of Initial Patent Examination to accord the application a filing date of October 25, 2001.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.



Charles Steven Brantley
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

¹ Paragraph (b) of 37 CFR 1.10 provides,

Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked.